and that the highway should be restored so as not to impair its usefulness. The whole construction of the road was delegated to an independent contractor, who negligently failed to put lights on an embankment thrown up on the highway, in consequence of which the plaintiff driving along the highway ran into it and was injured. The court expressly disapproved of a prior New York decision on this point and held that the defendant was liable. *Deming* v. *Terminal Ry. of Buffalo*, 169 N. Y. 1.

It has been thought that the employer is not liable on such a state of facts. *Smith* v. *Simmons*, 103 Pa. St. 32. Other courts have reached the result of the principal case on the grounds taken in the municipality cases. *Gray* v. *Pullen*, 5 B. & S. 970. This reasoning is tenable wherever the statute granting the license has in fact imposed affirmative precautionary duties. Unless such positive duties are imposed the analogy perhaps fails. There is, however, another ground upon which the liability may rest. It is well recognized that if what the employer contracts for is a public nuisance he is not relieved by the fact that it is created by the independent contractor. *Ellis* v. *Sheffield, etc., Co.*, 2 E. & B. 767. An excavation or obstruction in the highway is *per se* a nuisance. So far as it is authorized by law it is of course not actionable. It remains a nuisance, however, and, in so far as it is not surrounded by the precautions which are required by the statute or which ought reasonably to be taken, any injury resulting therefrom is actionable. *Woodman* v. *Metropolitan R. R. Co.*, 149 Mass. 335; *Colgrove* v. *Smith*, 102 Cal. 220. In this way the desirable result of the principal case is reached, whether or not there be express statutory requirements.

Severance of Chattels from the Realty by a Disseisor. — To the layman it seems obvious that if a disseisor cuts down and carries away trees from the disseisee's land, the latter should at once be able to recover the logs or their value directly. According to the authorities, however, such is not the law, and under such circumstances before a recovery of the land neither trover, replevin, nor assumpsit will lie for the severed realty. *Lehigh, etc., Co.* v. *New Jersey, etc., Co.*, 55 N. J. Law 350; *Anderson* v. *Hapler*, 34 Ill. 436; *Bigelow* v. *Jones*, 10 Pick. (Mass.) 161. A recent case suggests the question anew holding that the disseisee cannot recover either the logs or their value. *Clarke* v. *Clyde*, 66 Pac. Rep. 46 (Wash.). No class of cases better illlustrates the important part which the ancient doctrine of seisin still plays in the modern law. The reasons usually stated for the rule are, it is true, the undesirability of trying title to land in a transitory action, and the inexpediency of allowing the actual occupant to be harassed by frequent suits when a single real action would settle the dispute. See *Mather* v. *Trinity Church*, 3 S. & R. (Pa.) 509; *cf. Wright* v. *Guier*, 9 Watts (Pa.) 172. But it seems that the real explanation must be found in the doctrine of disseisin. 3 Bl. Com. 210; *Bigelow* v. *Jones*, *supra*. Actions which determine title to personal property are essentially possessory. But the right to possession of the severed realty, as chattels, is in the disseisor, for he has all the rights incident to ownership of an estate in fee simple. See 3 Harv. L. Rev. 23, 28. It is noticeable, however, that the courts overlooking a similar difficulty, allow trover for timber severed and carried away by a trespasser who does not claim title to the land. *Forsyth* v. *Wells*, 41 Pa. St. 291.

The disseisee, however, is not left without remedy for the injuries to the premises during disseisin. In certain jurisdictions he can recover damages in ejectment; or, having re-entered, he may bring trespass *quare clausum* or an action for mesne profits. See 85 Am. Dec. 321, note. For after re-entry the seisin by a fictitious relation is regarded as having been continuously in the real owner. 3 BL. COM. 210. This fiction once granted, there seems no reason why the disseisee should not take advantage of it in trover or replevin, as well as in trespass for mesne profits. Some courts allow it. See *Alliance Co.* v. *Nettleton Co.*, 74 Miss. 585; *Wilson* v. *Hoffman*, 93 Mich. 72. Others limit the disseisee to his action for mesne profits, denying that the disseisor's title to the chattel is divested by a recovery of the land. See *Brothers* v. *Hurdle*, 10 Ired. (N. C.) 490; *Page* v. *Fowler*, 39 Cal. 412. So where the disseisee has obtained possession of the logs, the disseisor may maintain replevin. *Lehman* v. *Kellerman*, 65 Pa. St. 489; *Busch* v. *Nester*, 70 Mich. 525, *contra*. Another conflict of cases arises concerning recovery against a purchaser from the disseisor. A strong current of authority allows trespass for mesne profits even against a purchaser for value in good faith. *Trubee* v. *Miller*, 48 Conn. 347. Apparently, therefore, trover might be brought. See *Alliance Co.* v. *Nettleton Co.*, *supra*. Courts which regard the disseisor as acquiring an indefeasible title to the severed realty are necessarily *contra*. *Faulcon* v. *Johnston*, 102 N. C. 264. Were it possible to remould the law various changes might be suggested. This artificial doctrine of disseisin however, harsh as it may be in particular instances, seems too firmly established to be modified otherwise than by legislation.

INTENT AS AFFECTED BY DRUNKENNESS. — It is to be regretted that the law with regard to civil suits in which the question of drunkenness arises has been left in a form far more indefinite than that of the criminal law. In the latter branch of the law the rule is well established that intoxication, though no defence, may be given in evidence to show the lack of specific intent. Though the general trend of civil decisions is in accord with this doctrine, that an act of a drunkard is still his voluntary act, there are several cases which tend to obliterate the distinction. In a recent suit on an insurance policy, under which the insurer was relieved of liability for intentional injuries, the insured had his thumb bitten by a drunken man. Although the court held that the facts showed an intentional injury, it was indicated that one may become so intoxicated as to be incapable of having an intention. *Northwestern Benevolent Society* v. *Dudley*, 61 N. E. Rep. 207. Opposed to this *dictum* is a decision in a slander suit where evidence of the defendant's drunkenness was held inadmissible. *Mix* v. *McCoy*, 22 Mo. Ap. 488. The latter case is undoubtedly the sound one, as the offence — voluntarily uttering the words — was committed irrespective of malice or of any particular state of mind. The distinction accepted by the criminal law, that a drunkard's act, though voluntary, may be unaccompanied by any particular state of mind, seems now to be gradually being adopted in both tort and contract cases. According to the text writers, both at law and in equity to-day a contract made by one utterly deprived of the use of his reason by drunkenness or otherwise is generally considered void, either on grounds of policy, MARKBY, ELEMENTS OF LAW, 5th ed., § 754; or